

Mark Hyland
Director Bureau of Remediation and Waste Management
Maine Department of Environmental Protection
State House Station # 17
Augusta, Maine 04333

June 28, 2006

Dear Mr. Hyland:

Please accept the following comments re: **Draft Guidelines for Land Treatment of Petroleum-Contaminated Soil** Land spreading, Landfarming and Low-Volume Land Treatment.

You may be aware that in August of 2005, MDEP permitted land spreading of petroleum-contaminated soil adjacent to HBMI tribal trust land and 66 families who live in our residential community. Our community also houses a headstart facility, health clinic and elders complex. MDEP staff had initiated consultation with us regarding the disposition of this soil early in the decision-making process, as the oil spill that resulted in soil contamination occurred next to a stream and thus also had the potential to threaten our downstream natural resources. For some reason, communications broke down. We learned of the final disposition decision when HBMI community members reported smelling fumes and seeing large trucks bringing in contaminated soil next door.

This decision created a tremendous amount of fear and anger among our community members and has required a great deal of work by both our staff and Maine DEP to address the issues raised by this action. Given a) that the contamination resulted from negligence on the part of Irving Oil Corporation, b) the alternative available to burn the soil onsite or in an unpopulated area, and c) the inexplicable reasoning behind landspreading contaminated soil next to one of a very few large housing developments in an otherwise relatively unpopulated region – especially considering Irving Oil Corporation owns a lot of undeveloped land in the area (not to mention their very deep pockets) - we consider the final disposition decision a very bad decision indeed.

We also believe that some change in MDEP's policies or procedures is necessary to avoid this kind of outcome in the future. To that end we recommend the following changes or additions to your draft guidelines and/or internal decision making policies and procedures.

Issue #1: As a federally recognized Indian Tribe, the Houlton Band of Maliseet Indians is imbued with the right and charged with responsibility of protecting the health, safety and welfare of our members. Our members look to their tribal government - as is evidenced by the above-described incident – when confronted with possible environmental risks. We are your neighbors and your actions affect our people and resources.

Recommendation: Change “Permissions and Notifications” 4. to say “The local municipality *and any nearby Indian Tribe (i.e. Aroostook Band of Micmac Indians, Houlton Band of Maliseet Indians, Passamaquoddy Tribe at Indian Township, Passamaquoddy Tribe at Pleasant Point and Penobscot Indian Nation)* must be notified in writing prior to initiating any soil treatment.

Issue #2: While consultation was initiated with us and others regarding the disposition of petroleum-contaminated soil, this consultation process fell apart – at least in our case. A full and complete consultation process could have avoided the conflicts resulting from the final disposition decision and perhaps would have been completed had a consultation process been included in your guidelines.

Recommendation: Include a consultation process in your guidelines, policies and/or procedures.

Issue #3: The homes in our community were located more than 300 feet away from the spread site yet the people who live there were still subjected to the fumes resulting from evaporating petroleum.

Recommendation: Increase the setback requirement in “Siting Criteria” 3. from occupied residential dwellings.

Issue #4: Clean-up costs (financial, emotional, and environmental) resulting from a violation of environmental regulations should – as much as possible - be borne by the violator, *not* – as in our case – by those who have had no influence over the choice of clean-up options. The decision to landspread contaminated soil near our location was made even more disturbing given the violator could easily afford the more expensive but – in our view- less risky (and certainly less distressing) option of “cooking” off the petroleum contaminants.

Recommendation: Develop a decision tree that makes landspreading and landfarming last resorts as options for land treatment of petroleum-contaminated soil. This decision tree should provide a result that ensures the violator bears as much of the cost of clean-up as is feasible.

We appreciate this opportunity to comment on Maine Department of Environmental Protection’s Draft Guidelines for Land Treatment of Petroleum-Contaminated Soil.

Sincerely,

Sharri Venno
Environmental Planner

cc: Brenda Commander, Tribal Chief, HBMI
Anthony Tomah, Natural Resources Director, HBMI
Cara Ellis, Water Resources Specialist, HBMI
David Littell, Commissioner, DEP
James Dusch, Director, Office of Policy Services, DEP
Nick Archer, Regional Director, DEP
Brian Beneski, Oil and Hazardous Materials Specialist, DEP